

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1322 OF 2006

M/s.Overseas Trading Corporation ..Petitioner.

V/s.

The Commissioner of Customs & Ors. ..Respondents.

Ms.F.Sethna for petitioner.

Mr.S.S.Pakale with A.S.Rao for respondents.

CORAM : V.C. DAGA AND
J.P.DEVADHAR, JJ.

DATED : 15TH JUNE, 2006.

P.C. :-

Rule, returnable forthwith. Mr.Pakale appearing for the respondents waives service. Heard finally by consent of the parties. Perused petition with rival pleadings.

2. The short issue involved in this petition is that whether or not the Tribunal has allowed the claim of the interest @ 20% p.a., while allowing appeal filed by the petitioner.

3. The learned counsel appearing for the

petitioner contends that reading of the order of the Tribunal would show that the Tribunal has not only allowed the refund but allowed the prayer claiming interest thereon. The prayer clause reads as under :-

" It is, therefore, most humbly prayed that the impugned order dated 25-6-97 passed by Smt.PRGM V.P.Singh, Commissioner of Customs, Appeal, Mumbai and the order of Shri K.D. Manker, Additional Commissioner of Customs, Group VII, Mumbai dated 20/23 December, 1996, be set aside and orders be passed that the customs duty paid by the appellant be immediately refunded to him with interest at the rate of 20% till the date of its realization. Further orders be passed that the bank guarantee furnished by the appellant be also discharged and/or pass any other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case. "

4. The relevant part of the order passed by the Tribunal is as under:-

"..Following the said two decisions of the Tribunal, we allow the appeal of the

appellant with consequential relief."

5. In short, the submission of the petitioner is that the entire appeal is allowed with consequential relief. Hence petitioner is entitled to claim the amount of interest @ 20% on the amount of refund which has already been paid to the petitioner.

6. Per contra, Mr. Pakale appearing for the respondents submits that if the order is read in its proper perspective, it would be absolutely clear that the interest has not been allowed. He submits that the implementing authority; namely; Dy. Commissioner of Customs has passed an order saying the Tribunal could not have awarded the interest as claimed. He, thus, submits that the petitioner has been rightly denied interest.

7. Having heard the rival parties and having seen the contentions raised by the rival parties in the light of prayer clause and operative part of the order, it would be reasonable to direct the petitioner to seek a clarification of the order from the Tribunal itself. In the event the Tribunal clarifies that the claim of refund was granted with interest, it would be obligatory on the part of the respondents to obey and implement the said order within 4 weeks from the date

of communication of the order, subject to their legal right and available remedy against that order in accordance with law. The Tribunal is expected to decide the application for clarification as expeditiously as possible, at any rate within a period of 2 months from the date of filing of the application provided necessary application is filed within one week from today.

8. In the above view of the matter, petition stands disposed of. Rule is made absolute in the terms of this order with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)